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## **FORMING OPEN AND ROBUST UNIVERSITY MINDS (FORUM) ACT**

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WHEREAS, the First Amendment of the United States Constitution and the Constitution protect the rights of freedom of speech, freedom of the press, freedom of religion, freedom of association and to petition the Government for all citizens.

WHEREAS, the Supreme Court has called public universities, “peculiarly the marketplace of ideas,” Healy v. James, 408 U.S. 169, 180 (1972), where young adults learn to exercise these constitutional rights necessary to participate in our system of government and to tolerate others’ exercise of the same rights, and there is “no room for the view that...First Amendment protections should apply with less force on college campuses than in the community at large,” Healy, 408 U.S. at 180;

WHEREAS, this legislature views the exercise of First Amendment rights on public university campuses in this state as critical components of the education experience for students and requires that each

public university in this state ensure free, robust, and uninhibited debate and deliberations by students whether on or off campus;

WHEREAS, this legislature finds that public universities in this state and elsewhere are failing to provide adequate safeguards for the First Amendment rights of their students leading to a stifling of expression on campus

WHEREAS, the Supreme Court has warned that if public universities stifle student speech and prevent the open exchange of ideas on campus, “our civilization will stagnate and die.” Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957); and

WHEREAS, this legislature has determined that a significant amount of taxpayer dollars is appropriated to public institutions of higher education each year and as such, this legislature must ensure that all public institutions of higher education receiving state funds recognize freedom of speech as a fundamental right for all, now therefore be it enacted by the state legislature of the state of as follows:

## This Act shall be known as the Forming Open and Robust University Minds (FORUM) Act

### Section 1: Definitions<sup>[1]</sup>

(1) “Benefit” means the following: (1) recognition; (2) registration; (3) the use of facilities of the institution of higher education for meetings or speaking purposes; (4) the use of channels of communication; and (5) funding sources that are otherwise available to other student organizations at the public institution of higher education.

(2) “Campus Community” includes students, administrators, faculty and staff at the institution of higher education and their invited guests.

(3) “Harassment” shall mean only that expression that is unwelcome, so severe, pervasive, and subjectively and objectively offensive, that a student is effectively denied equal access to educational opportunities or benefits provided by the public institution of higher education.

(4) “Materially and substantially disrupts” means when a person, with the intent to or with knowledge of doing so, significantly hinders another person’s or group’s expressive activity, prevents the communication of the message, or prevents the transaction of the business of a lawful meeting, gathering or procession by:

(i) engaging in fighting, violent, or other unlawful behavior; or

(ii) physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity. Conduct that “materially disrupts” shall not include conduct that is protected under the First Amendment to the United States Constitution or

[State Constitution citation]. Such protected conduct includes, but is not limited to, lawful protests in the outdoor areas of campus generally accessible to the members of the public (except during times when those areas have been reserved in advance for other events), or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

(5) “Outdoor areas of campus” means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways or other similar common areas and does not include outdoor areas where access is restricted from a majority of the campus community.

(6) “Public institution of higher education” means any public technical institute, public junior college, public senior college or university, law school, medical or dental school, public state college, or other agency of higher education as defined in section of the Code.

(7) “Student” means any person who is enrolled on a full-time or part-time basis in a public institution of higher education.

(8) “Student organization” means an officially recognized group at a public institution of higher education, or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through the institution of higher education as defined in this section.

Section 2. Expressive activities protected under the provisions of this Act include, but are not limited to, any lawful verbal, written, audio-visual, or electronic means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches and guest speakers, distribution of literature, carrying signs, and circulating petitions.

Section 3. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums for the campus community, and public institutions of higher education shall not create “free speech zones” or other designated areas of campus outside of which expressive activities are prohibited. Public institutions of higher education may maintain and enforce reasonable time, place and manner restrictions narrowly tailored in service of a significant institutional interest only when such restrictions employ clear, published, content- and viewpoint-neutral criteria, and provide for ample alternative means of expression. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble and distribute literature.

Nothing in this section shall be interpreted as limiting the right of student expression elsewhere on campus.

Section 4. Any person who wishes to engage in non-commercial expressive activity on campus shall be permitted to do so freely, as long as the person’s conduct is not unlawful and does not materially and substantially disrupt the functioning of the public institution of higher education, subject only to the requirements of section 3 herein.

Nothing in this section shall prohibit public institutions of higher education from maintaining and enforcing reasonable time, place and manner restrictions that are narrowly tailored to serve a significant institutional interest only when such restrictions employ clear, published, content and viewpoint-neutral criteria. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble, speak and distribute literature.

Nothing in this section shall be interpreted as preventing public institutions of higher education from prohibiting, limiting, or restricting expression that the First Amendment does not protect (e.g. true threats, expression directed to provoke imminent lawless actions and likely to produce it,) or prohibiting harassment as defined in section 1 of this Act.

Nothing in this section shall enable individuals to engage in conduct that intentionally, materially, and substantially disrupts another's expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.

Freedom of Association and Nondiscrimination Against Student(s) and Student Organizations  
Section 5. No public institution of higher education may deny a religious, political or ideological student organization any benefit or privilege available to any other student organization, or otherwise discriminate against such an organization, based on the expression of the organization, including any requirement that the leaders or members of such organization:

(1) Affirm and adhere to the organization's sincerely held beliefs;

(2) Comply with the organization's standards of conduct; or

(3) Further the organization's mission or purpose, as defined by the student organization  
Free Speech Education for Members of the Campus Community

Section 6. Public institutions of higher education shall make public in their handbooks, on their websites, and through their orientation programs for students the policies, regulations, and expectations of students regarding free expression on campus consistent with this Act.

Section 7. Public institutions of higher education shall develop materials, programs, and procedures to ensure that those persons who have responsibility for discipline or education of students, such as administrators, campus police officers, residence life officials, and professors, understand the policies, regulations, and duties of public institutions of higher education regarding free expression on campus consistent with this Act.

### Accountability to the Public

Section 8. Each public institution of higher education shall publicly post on their website, as well as submit to the governor and state legislature by (30 days prior to the beginning of the state legislative session), a report which will detail the course of action implemented to be in compliance with the requirements of this Act. A report shall also be given in the instance of any changes or updates to the chosen course of action. The information required in the report must be:

(1) accessible from the institution's Internet website home page by use of not more than three links;

(2) searchable by keywords and phrases; and

(3) accessible to the public without requiring registration or use of a user name, a password, or another user identification.

(4) The report shall include:

A description of any barriers to or incidents of disruption of free expression occurring on campus, including but not limited to attempts to block or prohibit speakers and investigations into students or student organizations for their speech. The description shall include the nature of each barrier or incident, as well as what disciplinary action, if any, was taken against members of the campus community determined to be responsible for those specific barriers or incidents involving students shall be reported without revealing those students' personally identifiable information; and

Any other information each public institution of higher education deems valuable for the public to evaluate whether free expression rights for all members of the campus community have been equally protected and enforced consistent with this act.

If a public institution of higher education is sued for an alleged violation of First Amendment rights, a supplementary report with a copy of the complaint, or any amended complaint, must be submitted to the governor and state legislature within 30 days.

## Remedies

Section 9. Any person or student association aggrieved by a violation of this Act may bring an action against the public institution of higher education and its employees acting in their official capacities, responsible for the violation and seek appropriate relief, including, but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and court costs. If a court should find a violation of this Act, it shall issue an award of at least \$5,000. Any person or student organization aggrieved by a violation of this Act may assert such violation as a defense or counter claim in any disciplinary action or in any civil or administrative proceedings brought against such student or student organization. Nothing in this section shall be interpreted to limit any other remedies available to any person or student organization.

## Statute of Limitations

Section 10. A person shall be required to bring suit for violation of this section not later than one year after the day the cause of action accrues. For purposes of calculating the one-year limitation period, each day that the violation persists, and each day that a policy in violation of this section remains in effect, shall constitute a new day that the cause of action has accrued.

### Immunity

Section 11. The state waives immunity under the Eleventh Amendment of the United States Constitution and consents to suit in a federal court for lawsuits arising out of this act. A public institution of higher education that violates this act is not immune from suit or liability for the violation.

### Severability

Section 12. If any provision of this act or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this act and the application of the provision to any other person or circumstance shall not be affected.

### Effect

Section 13. This act shall take effect upon its passage.'

*Amended and Re-approved on December 26, 2018.*